

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.B., a Person Coming Under the  
Juvenile Court Law.

B208744  
(Los Angeles County  
Super. Ct. No. CK 71150)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA E. et al.,

Defendants and Appellants.

APPEAL from an Order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal for Appellant Lisa E.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Timothy M. O’Crowley, Senior Deputy County Counsel for Respondent Department of Children and Family Services.

Mother Lisa E. appeals the dependency court's dispositional order requiring her to randomly test for alcohol use and enroll in an alcohol treatment program if she submits a diluted test. She contends that the automatic nature of the order deprived her of her due process rights to present relevant evidence and her right to confront witnesses. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The Department received a referral on December 23, 2007, that 16-year-old A.B. had been shut out of her home for three days after her stepfather Jim E. had come home intoxicated and found her in her bedroom with a male. Jim grabbed A.B. by the hair and threw her against the wall. A.B.'s mother Lisa E. was drunk and had passed out on the sofa.

A.B. told the Sheriff's Department that her family had moved from Oregon six months before. She reported that Jim had been physically abusing her for a long time and she was afraid of him; both of her parents drank, but Jim drank more than Mother. A.B. admitted that she had run away several times before, and stated she had been living on the mountain behind her house for the past three days. A.B. was placed in a foster home.

At the December 27, 2007 detention hearing, the dependency court released B.B., A.B.'s brother, to Lisa, but ordered that A.B. remain in foster care.<sup>1</sup> The court ordered Jim to move out of the family home, and ordered the Department to "make frequent unannounced home calls on mother at any time of day or night" and to verify that Jim was not in the home. Mother was ordered to test for alcohol, and the court ordered monitored visitation between Mother and A.B., plus individual and joint counseling.

On January 15, 2008, the Department applied for a protective custody warrant for A.B. because A.B. had run away from her foster home on December 28, 2007. Although A.B. returned on December 31, 2007 and was placed in a new foster home on January 4,

---

<sup>1</sup>

The dependency court did not order B.B. detained because he had special needs and had not suffered physical abuse or inappropriate discipline from either Mother or Jim. However, due to Jim's conduct towards A.B., the court permitted B.B. to remain in Mother's custody on condition that Jim move out of the home.

2008, she ran away on January 7, 2008. A.B. was whereabouts unknown. The dependency court issued the warrant.

The Department's jurisdictional/disposition report indicated that the family had received services in Oregon in a voluntary case that had been open for approximately six months. The Department learned from Oregon child services that A.B. had fairly significant mental health issues and disruptive behaviors "to the point the parents felt they were unable to manage her in the home." In addition to self-harming and aggressive behaviors, A.B. had likely substance abuse issues and was a runaway threat. A.B. was placed in a treatment foster home in Oregon, but was let go from the program due to threats and possibility of self-harm. She was placed in a locked facility, but ran away.

Regarding the events leading to A.B.'s current detention, Mother told the Department that Jim had come home to find A.B. in bed with a boy having sex. Mother told the Sheriff's Department that she had taken her anti-depressant medication, had a couple of drinks, and passed out. Jim admitted pulling A.B.'s hair. A.B. told the Sheriff's Department that Jim was drunk on the night he came home and found her with a boy in her room. She denied they were having sex.

The Department further reported Jim had physically abused A.B. on prior occasions by hitting her, pushing her down a staircase, slamming her into walls, and holding her face down in her own blood from her resulting wounds. Jim did not abuse A.B.'s brother B.B. Mother claimed she had not seen Jim hit A.B., but admitted that both she and Jim had slapped A.B.

The Department found that Mother failed to take responsibility for the role she played in A.B.'s behavior. "She clearly blames everything on [A.B.] and does not recognize how her lack of consistent parenting has resulted in her daughter's negative behaviors." The Department recommended psychological evaluation for A.B. due to her anger and other psychological issues, and counseling for Mother with random alcohol testing.

At the January 29, 2008 dispositional hearing, the court noted that A.B. remained whereabouts unknown, and ordered the matter to mediation for March 20, 2008.

On February 22, 2008, Mother and Jim attended a team decision meeting, at which time “[a]ll parties involved were engaged in finding fault with [A.B.]. . . . [¶] . . . [¶] It is clear from Mother’s statements that she has no insight into her lack of attachment to her child [A.B.] and her lack of parenting skills. [A.B.’s] current delinquent behavior could be directly linked to mother’s lack of attachment and attention.”

On March 20, 2008, the Department reported that A.B. had called Jim and he had picked her up. A.B. was placed in a foster home. On February 29, 2008, Mother had given a diluted urine test and on March 5, 2008 failed to submit for testing. Jim had failed to submit to drug testing.

On March 20, 2008, the parties failed to resolve the matter at mediation. The court continued the matter to April 23, 2008, for a progress hearing, and set April 30, 2008 for the jurisdictional hearing.

On April 7, 2008, the Department located A.B. and placed her in a foster home. After learning A.B. was pregnant, the Department moved her to a new foster home. On April 17, 2008, the court recalled the custody warrant for A.B.

The Department’s report for the progress hearing stated that B.B. remained at home with Mother, while A.B. was in foster care. The Department found that Mother engaged in a pattern of sending A.B. away for treatment instead of dealing with the family issues, that Mother lacked insight into her lack of parenting skills and her contribution to A.B.’s problems. Further, Mother had no insight into how her own childhood as the daughter of an alcoholic mother who could not meet her needs contributed to her current parenting difficulties with A.B. Mother had told the Department that B.B.’s behavior would improve if A.B. were not at home; however, B.B.’s behavior had deteriorated since A.B.’s detention. The Department recommended therapy for Mother to address parenting issues and Mother’s unresolved childhood trauma.

On April 23, 2008, the court ordered A.B. into therapy and directed that she have a mental health assessment. On April 30, 2008, the Department requested a protective custody warrant for A.B., who had run away from her foster home on April 28, 2008.

At the April 30, 2008 adjudication and disposition hearing, Mother pleaded no contest, the court sustained the allegations of the amended section 300 petition, and ordered reunification services for Mother and Father. With regard to her alcohol testing, Mother advised the court that she had trouble urinating in front of the lab technicians, and that they gave her water to help her urinate, and complained that to consider a diluted test to be a dirty test without having an evidentiary hearing would not permit her to contest whether she should immediately be required to go to alcohol rehabilitation. Mother offered to submit a blood test. Mother was ordered to weekly random drug and alcohol testing, with a dirty test requiring her to complete a drug rehabilitation program. A diluted test would be considered a dirty test. The court stayed reunification services for A.B. pending her return to Departmental custody, and set the matter for a continued hearing June 5, 2008.

The Department reported on May 27, 2008 that A.B. had come forward and the Department had placed her in a new foster home. On June 5, 2008, the court recalled the custody warrant. Mother reiterated her objection to a diluted test being considered a dirty test given her difficulties with testing, although she asserted she had been complying with testing. The court identified A.B.'s permanent plan as a transition from foster care to emancipation.

### **DISCUSSION**

Mother contends that the dependency court's ordering requiring her to enter an alcohol rehabilitation program if she submitted a diluted urine test violates her due process rights to put on evidence and requires per se reversal. Furthermore, she contends substantial evidence does not support the dependency court's reunification plan because the order is not specifically designed to eliminate the conditions that brought the children to the attention of the dependency court. We disagree.

At the dispositional hearing, the dependency court must order services to facilitate reunification. (Welf. & Inst. Code, § 361.5, subd. (a).) The dependency court has broad discretion to fashion a dispositional order to protect the child's best interests. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Nonetheless, the reunification plan

must be appropriate for each family and be based upon unique facts relating to each family. The Department must offer services designed to eliminate the conditions that led to the dependency proceedings. (*Id.* at pp. 1006-1007.) In that regard, a dependency court may order drug and alcohol testing if reasonably related to protecting a dependent child's safety and well-being. (*Id.* at p. 1007; *In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) We will uphold the dependency court's factual findings regarding the reunification plan if supported by substantial evidence. (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 168.)

Under these guidelines, the court's order that Mother test for alcohol use was not an abuse of discretion, and the dependency court's conclusion testing was warranted due to Mother's alcohol abuse was supported by substantial evidence. Mother was passed out from alcohol intoxication the day Jim came home and beat A.B. and threw her out of the house. Further, the record supports the conclusions Mother's alcohol problems stem from her own childhood and Mother's problems, including her alcohol abuse, were at the root of A.B.'s own behavior problems.

Nonetheless, Mother argues that under the circumstances, the order interferes with her rights to confront witnesses and present evidence, and the error is reversible per se, or at a minimum must be evaluated under the *Chapman* standard of harmless error. (See *In re Stacy T.* (1997) 52 Cal.App.4th 1415.) We disagree.

The deprivation of the right asserted here (to cross-examine lab technicians concerning lab results) does not fit within the limited category of errors that are reversible per se. The court in *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, explained that "structural error," or error requiring automatic reversal, is an error that involves "basic protections," without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. (*Judith P.*, *supra*, 102 Cal.App.4th at p. 555.) On the other hand, "trial error" is error which occurs during the presentation of the case and is reviewed under a harmless error standard. "An error that occurs during the trial process itself does not require automatic reversal because a court may

quantitatively assess such error in the context of other evidence presented in order to determine whether the error was harmless. . . .” (*Id.* at p. 555.)

*Stacy T.* applied the *Chapman*<sup>2</sup> standard of error in concluding that the deprivation of the right to cross-examine the social worker concerning the contents of the social worker’s report was prejudicial beyond a reasonable doubt. (*In re Stacy T.*, *supra*, 52 Cal.App.4th at p. 1426.) Aside from the fact that *Stacy T.* is distinguishable on its facts, we find no error here and thus the standard of prejudice does not direct our analysis. In *Stacy T.*, the mother was denied due process based upon her failure to appear at a scheduled settlement conference, after which the dependency court entered her default, found the jurisdictional allegations to be true, and entered a dispositional order of foster care -- all without giving the mother an opportunity to confront and cross-examine the social workers whose reports formed the basis of the court’s decision. (*Id.* at pp. 1418-1421.) Here, Mother seeks to go behind her test results to attempt to explain the results are not what they appear. Tests, such as alcohol and drug tests, are standardized scientific tests administered according to a chemically calibrated protocol. Mother, due to nervousness or modesty, claims she is unable to provide a sample unless she can essentially subvert the test protocol. Mother has no due process or confrontation clause right to do so.

---

<sup>2</sup> *Chapman v. California* (1967) 386 U.S. 18.

**DISPOSITION**

The order of the superior court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.